IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA BUMPUS, RONALD BIENDSEIL, LESLIE W. DAVIS, III, BRETT ECKSTEIN, GLORIA ROGERS, RICHARD KRESBACH, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN, CINDY BARBERA, RON BOONE, VERA BOONE, EVANJELINA CLEERMAN, SHEILA COCHRAN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD LANGE, and GLADYS MANZANET,

Plaintiffs,

Case No. 11-C-00562
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

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DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND THE ORIGINAL JUDGMENT ON COSTS, AND OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-C-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

The defendants, Members of the Wisconsin Government Accountability Board, each in his official capacity ("GAB"), and its Director and General Counsel, by their attorneys, J.B. Van Hollen, Attorney General, and Maria S. Lazar, Assistant Attorney General, and Reinhart Boerner Van Deuren s.c., submit the following Response in Opposition to Plaintiffs' Motion to Alter or Amend the Original Judgment on Costs, and Opposition to Motion for Attorney's Fees and Costs dated April 5, 2012.

INTRODUCTION

The plaintiffs correctly note that this Court has already issued an Order which provides "that each party is to bear its own costs." (Memorandum Opinion and Order, dated March 22, 2012, at 38). The *Baldus* and *Voces* plaintiffs ask this Court to reverse that decision which was subsequently entered in a Judgment. (Judgment, dated March 22, 2012, at 3). The *Baldus* and *Voces* plaintiffs now ask this Court to award them attorney's fees, which are statutorily defined

as a component of costs, as well as other traditional costs. The Court has already ruled on this point. That ruling was fair and just given the status of the case and the many groundless claims the *Baldus* plaintiffs voluntarily dismissed at the last minute or that were ultimately denied by the Court. That ruling should stand.

However, if the Court alters or amends its Judgment on Costs, then defendants should be entitled to their fees and costs with respect to several meritless claims. In addition, if the Court alters or amends its prior Order, the defendants respectfully reserve their right to challenge the reasonableness of the attorney's fees and costs for *both* plaintiffs and would request that the Court set a briefing schedule on that issue. In the alternative, because a Notice of Appeal to the United States Supreme Court has been filed, the defendants propose that the Court postpone determination on the award of any attorney's fees and costs pending a ruling on the appeal.

RELEVANT PROCEDURAL HISTORY

The *Baldus* plaintiffs filed a Complaint (Dkt. #1 – June 10, 2011) before there was a redistricting law in place. They then filed an Amended Complaint (Dkt. #12—July 21, 2011) after the laws were passed by the Legislature, but before they were enacted by the Governor. Still later, they filed a Second Amended Complaint (Dkt. #48- November 18, 2011) challenging the redistricting legislation set forth in 2011 Wisconsin Acts 43 and 44 ("Act 43" and "Act 44").

That Second Amended Complaint included the following nine counts: 1-Legislative boundaries unconstitutionally sacrifice redistricting principles (core retention/population shifts); 2-Legislation does not recognize local governmental boundaries; 3-Legislative districts unnecessarily disenfranchise 300,000 citizens; 4-Congressional districts are not compact and fail to preserve communities of interest; 5-Congressional and Legislative districts constitute unconstitutional gerrymandering; 6-Legislative districts violate Federal Voting Rights Act (with

respect to African American, Native American, and Latino districts); 7-Legislative districts unconstitutionally use race as a predominant factor; 8-New Congressional and Legislative districts are not justified by any legitimate state interest; and 9-Any special or Recall elections cannot be conducted under Act 43. In addition, the Second Amended Complaint sought a declaration that both Act 43 and 44 were unconstitutional, and asked the Court to enjoin the Government Accountability Board from applying those Acts.

The intervenor-plaintiffs (a group of Democratic Congresspersons) filed a Complaint on November 21, 2011, in which they essentially joined the *Baldus* plaintiffs' Claims 4, 5, and 7 as they pertained to Act 44. (Dkt. #67).

On November 22, 2011, the case was consolidated with the case brought by the *Voces* plaintiffs, in which the *Voces* plaintiffs had alleged a Voting Rights Act claim against defendants substantively the same as the portion of the *Baldus* plaintiffs' Voting Right Act claim relating to Latino assembly districts. (Dkt. # 55). On December 8, 2011, the intervenor-defendants (a group of Republican Congresspersons) filed a motion for judgment on the pleadings, requesting the dismissal of all of the claims related to Act 44. (Dkt. #75).

On February 10, 2012, the defendants filed a motion for summary judgment on Counts 2-6 and 8 of the plaintiffs' Second Amended Complaint. (Dkt. #128). On February 13, 2012, the *Baldus* plaintiffs filed a letter objection (Dkt. #133) with the Court regarding the summary judgment motion indicating that they would not be filing a response.

On the evening of the first night of the two-day trial, the *Baldus* plaintiffs voluntarily dismissed Claims 2, 4, 5, 7, and the portion of Claim 6 not related to Latino districts. In addition, the *Baldus* plaintiffs dropped all allegations seeking a declaration that Act 44 was unconstitutional. Thus, the *Baldus* plaintiffs dismissed several of the claims upon which the

defendants had moved for summary judgment (Claims 2, 4-5, and part of 6). Despite the *Baldus* plaintiffs' dismissal of all claims with respect to Act 44, the intervenor-plaintiffs maintained and continued to assert those claims on their own behalf throughout the balance of the trial. (*See* Dkt. #210 at 11).

On March 22, 2012, this Court issued a Memorandum Opinion and Order, in which it dismissed all claims[1] against the defendants but for the *Voces* Voting Rights Act claim and the portion of the *Baldus* plaintiffs' Claim 6 regarding Assembly Districts 8 and 9.[2] (Dkt. #210).

The Memorandum Opinion and Order's conclusion states "IT IS FURTHER ORDERED that each party is to bear its own costs." (*Id*. at 38). A Judgment was entered later that day consistent with this directive. (Dkt. #211 ("IT IS FURTHER ORDER AND ADJUDGED that each party is to bear its own costs")).

I. THE COURT'S DETERMINATION THAT ALL PARTIES WERE TO BEAR THEIR OWN COSTS WAS JUST AND PROPER.

The plaintiffs ask this Court to alter or amend its Judgment that each party is to bear its own costs and are now seeking attorney's fees under the Civil Rights Act, 42 U.S.C. § 1988 and

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[1]The Court found "no merit in Claims One or Eight and conclude[d] that they must be dismissed." (Memorandum Opinion and Order at 18). With respect to disenfranchisement, Claim Three, the Court found that "Act 43 does not violate the Equal Protection Clause on this basis." (*Id.* at 20). The Court also dismissed the Act 44 claims and those of compactness, communities of interest, and political gerrymandering were left open by the intervenor-plaintiffs. (*Id.* at 20-23). And, finally, with respect to Claim 9 (regarding the use of the new districts in any future recall elections before November, 2012), the Court held "that there is no question ripe for determination before [it] at this time." (*Id.* at 32).

[2]Although the order portion of the Court's holding stated it was granting both the plaintiffs' and the intervenor-plaintiffs' Sixth Claim for Relief, Claim 6 (the Voting Rights Claim, was not one of the claims that the intervenor-plaintiffs joined. (Dkt. #67 (noting that Claim 6 relates solely to Act 43 and as such, intervenor-plaintiffs had no legal interest in it)).

42 U.S.C. § 1973*l*(e). But they appear to acknowledge, correctly, that attorney's fees are a component of the costs. *See* Memorandum of Law in Support of Plaintiffs' Motion to Alter or Amend the Original Judgment on Costs and Motion for Attorney's Fees and Costs (Dkt. #229) ("Plaintiffs' Memo. of Law") at 3; *see also* 42 U.S.C. § 1988(b) (granting district courts the discretion to award "reasonable attorney's fee as part of the costs"); 42 U.S.C. § 1973*l*(e) (same). As such, it appears they also understand that the Court has already decided not to award any party attorney's fees or any other component of costs.

That decision is well within this Court's authority. As the plaintiffs correctly note: "it is within the Court's discretion to order that costs be borne by each party." (Plaintiffs' Memo. of Law at 3). Even when a party is "prevailing" in a literal sense, it is not necessarily entitled to fees if it prevailed on only a small fraction of what it sought. *Farrar v. Hobby*, 506 U.S. 103, 115 (1992) (applying rule in nominal damages context); *id*. at 121 ("[plaintiff] may have won a point, but the game, set, and match all went to the defendants") (O'Connor, J., concurring).

During the course of the trial, the *Baldus* plaintiffs voluntarily dismissed several of their claims,[3] including all of their challenges to the congressional boundaries in Act 44, tacitly conceding that they were claims for which the *Baldus* plaintiffs had no realistic chance of prevailing. The Court later determined that all but a piece of one of the remaining claims were

[3]The evening of the first night of the two-day trial, the *Baldus* plaintiffs voluntarily dismissed Claim 2 (Legislation does not recognize local government boundaries), Claim 4 (Congressional districts are not compact and fail to preserve communities of interest), Claim 5 (Congressional and Legislative districts constitute unconstitutional gerrymandering, Claim 6 (Legislative districts violate Federal Voting Rights Act with respect to African Americans and Native Americans) (but Claim was kept for Latino districts), Claim 7 (Legislative districts unconstitutionally use race as a predominant factor). In addition, the *Baldus* plaintiffs dropped all allegations seeking a declaration that Act 44 was unconstitutional.

without merit as well. And, as set forth below, defendants should be entitled to certain of *their* fees as prevailing defendants on certain of the claims.

II. THE *BALDUS* PLAINTIFFS ARE ONLY PARTIALLY PREVAILING PARTIES AND THEY FAILED TO SUBMIT THE REQUISITE SUPPORTING DOCUMENTATION.

The *Baldus* plaintiffs' Complaint actually comprises two distinct cases. The first was a challenge to both redistricting maps based on the plaintiffs' disagreement with how the Legislature's discretionary decisions affected concepts such as disenfranchisement, compactness, communities of interest, and political gerrymandering. The second case (which was factually and legally distinct from the first) addressed the Voting Rights Act with respect to the African American, Native American, and Latino communities in Wisconsin. The Court entirely rejected the first case, and 2/3rds of the second case failed because there was never any evidence to support it.

Consequently, there can be no dispute that the *Baldus* plaintiffs are only partially prevailing parties: they lost (or withdrew at the last moment when a loss was all but a foregone conclusion) on 8 and 2/3rds of their 9 claims. So, if the Court alters or amends the Judgment, these plaintiffs are not entitled to their entire attorney's fees and costs. The majority of the litigation and discovery related to the 8 and 2/3rds of the 9 claims were unsuccessful. Not only were almost all of their claims ultimately unsuccessful, they were premised on facts and legal propositions that had no overlap with the facts and law governing the one successful claim. Which means the *Baldus* plaintiffs cannot reasonably claim entitlement to fees and costs related to those unsuccessful claims.

Even with respect to the Voting Rights Act claim, the *Baldus* plaintiffs finally conceded that they had no evidence to support 2/3 of that single claim. Their own expert admitted that

there was no African American claim[4] and the plaintiffs never introduced *any* evidence with respect to the Native American claim. So, they were unsuccessful on those groundless claims. And, there is some question as to whether the *Baldus* plaintiffs merely turned over the remaining 1/3 of their Voting Rights Act count to the *Voces* plaintiffs, riding their coattails to the ultimate Judgment. Thus, the best-case scenario for the *Baldus* plaintiffs is that they are "partially" prevailing parties.

Next, the Court must identify the aspects of the case for which those plaintiffs are entitled to any fees or costs. The Supreme Court says that "[a] reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." *Hensley v. Eckerhart*, 461 U.S. 424, 439-40 (1983). It falls to this Court to determine "the relationship between the extent of success [of the *Baldus* plaintiffs] and the amount of the fee award." *Id.* at 439 (footnote omitted).

The *Baldus* plaintiffs' success was dwarfed by their failures as to the litigation as a whole. Here is the measure of their success in the context of the entire case: the plaintiffs tried to invalidate the entire redistricting plan adopted by the Legislature—all 99 Assembly, 33 Senate, and 8 Congressional Districts. But out of 140 districts, the Court found that only one boundary line could not be upheld. Any award of attorney's fees and costs (if the Court is inclined to amend its Judgment) should account for that success ratio.

Finally, if the Court were to alter the Judgment, and award some fees and costs, the *Baldus* plaintiffs bore the burden of establishing the reasonableness of those fees and costs. The *Voces* plaintiffs submitted two declarations and detailed summaries of their work. The *Baldus* plaintiffs provided an estimate of their hourly fees and a condensed itemization of their costs. To

[4]Deposition Transcript of Kenneth Mayer, dated January 27, 2012, at 193.

justify their fee request, the *Baldus* plaintiffs needed to submit "sufficient detail [about their fees] so that the Court can determine '*with a high degree of certainty*' that the hours billed were actually and reasonably expended, that the hourly rate charged was reasonable, and that the matter was appropriately staffed to do the work required efficiently and without duplicative billing." *Watkins v. Vance*, 328 F. Supp. 2d 23, 26 (D.D.C. 2004) (citation omitted) (emphasis added). Counsel for the partially prevailing party must demonstrate they have exercised "billing judgment:"

> The district court also should exclude from this initial fee calculation hours that were not "reasonably expended." Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.

Hensley, 461 U.S. at 434 (internal citations and quotation marks omitted) (emphasis in original).

The *Baldus* plaintiffs bear the burden of establishing all requisite elements of the claimed fee award, including entitlement to an award, the documentation of appropriate hours, and justification of the reasonableness of their rates. *See* 42 U.S.C. § 1988(b); *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984); *Hensley*, 461 U.S. at 437. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433. In particular, "[a]s to the reasonableness of the hours expended, when a fee petition is vague or inadequately documented, a district court may either strike the problematic entries or (in recognition of the impracticalities of requiring courts to do an item-by-item accounting) reduce the proposed fee by a reasonable percentage." *Harper v. City of Chicago Heights*, 223 F.3d 593, 605 (7th Cir. 2000), *reh'g and reh'g en banc denied*.

The *Baldus* plaintiffs have presented no evidence to meet this burden, and therefore, the defendants are not able to review and/or challenge their request. Accordingly, should the Court alter the Judgment and allow the plaintiffs to seek attorney's fees and costs, and should the Court determine that the *Baldus* plaintiffs may amend their Motion and provide the detailed statements, the defendants request the opportunity to review the statements and to assert challenges if appropriate.

III. ON SEVERAL CLAIMS BROUGHT BY THE *BALDUS* PLAINTIFFS AND BY THE INTERVENOR-PLAINTIFFS, THE DEFENDANTS WERE THE "PREVAILING PARTY" AND THEY ARE ENTITLED TO *THEIR* FEES AND COSTS.

As noted above, the defendants were the prevailing party on all but one-third of Claim 6 of the *Baldus* claims and prevailed in the entirety with respect to the intervenor-plaintiffs' claims. While 42 U.S.C. §§ 1973*l*(e) and 1988 authorize courts to award fees to the "prevailing party," they most often refer to the award of fees to the "prevailing plaintiff." But, a defendant who defeats a civil rights violation claim may obtain fees if the "claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." *Christianburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 422 (1978).

The *Baldus* plaintiffs knew that 2/3rds of their Voting Rights Act claim were baseless. Their expert, Dr. Kenneth Mayer, admitted at his deposition[5] that the African American claim had no basis in law or fact whatsoever. Moreover, at no time whatsoever, did the *Baldus* plaintiffs ever introduce *any* evidence with respect to Native American component of their

[5]Deposition Transcript of Kenneth Mayer, dated January 27, 2012, at 193.

Voting Rights Act claim.[6] Yet, the *Baldus* plaintiffs continued to press these claims until the middle of the trial, by which time the defendants had (obviously) already been obligated to expend massive time and effort preparing their defense on these meritless Voting Rights Act claims.

Similarly, with respect to several of the "traditional redistricting principle" claims, both the *Baldus* plaintiffs and the intervenor-plaintiffs continued asserting their validity even though the Court lacked jurisdiction to hear many of them, and they plainly lacked evidence to support them in any event. The *Baldus* plaintiffs offered no legal authority for these claims, and many were directly contrary to well settled law. For example, the *Baldus* plaintiffs continued to assert up until the eve of trial, without citing any supporting authority, that "[r]egardless of size, population deviations [between state legislative districts] that cannot be justified by traditional redistricting criteria violate the Equal Protection Clause," (Joint PreTrial Report [Dkt. #158], at 122). And they said this even though the United States Supreme Court rejected this very notion nearly 40 years ago. *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973) ("[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State").

The *Baldus* plaintiffs also insisted that a failure to apply traditional redistricting principles (compactness, respect for communities of interests) was itself independently actionable. (Joint PreTrial Report at 122). But the plaintiffs got this completely backwards—following "traditional redistricting criteria" is a justification for population deviations that would

[6]To the contrary, even after one of the defendants' witnesses testified at his deposition, in February 2012, as to his knowledge of how the legislative boundaries actually respected Native American communities of interest, these plaintiffs continued to stand behind this Claim. (*See* Second Deposition Transcript of Joseph Handrick, dated February 1, 2012, at 304-06, 396-97).

otherwise be unacceptable. *Frank v. Forest County*, 194 F. Supp. 2d 867, 874 (E.D. Wis. 2002) (burden to justify variance does not shift to defendant until plaintiff makes showing of a greater than 10% population deviation); *Baumgart v. Wendelberger*, 2002 WL 34127471, at *3 (E.D. Wis. May 30, 2002). And there is no such thing as a viable, free-standing claim for lack of compactness, lack of contiguity or failure to maintain communities of interest or core populations under the U.S. Constitution. *See, e.g., Gorrell v. O'Malley*, 2012 WL 226919 (D. Md. Jan. 19, 2012). "[C]ompactness, contiguity, and respect for political subdivisions . . . are important not because they are constitutionally required—*they are not*—but because they are objective factors that may serve to defeat a claim [of unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (citation omitted).

Because of the plaintiffs' insistence on pursuing evidence-free and legally unsupportable causes of action, the defendants had to prepare for trial on *all* of the *Baldus* claims in the Second Amended Complaint as well as all of the claims in the intervenor-plaintiffs' Complaint. For these reasons, should this Court revisit its Order that each party is to bear its own costs, the defendants respectfully request that they be allowed to submit a summary of the attorney's fees and costs spent on defending these groundless claims.

IV. DEFENDANTS RESERVE THE RIGHT TO CHALLENGE THE REASONABLENESS OF THE PLAINTIFFS' ATTORNEY'S FEES AND COSTS FOLLOWING A RULING ON LIABILITY.

The *Baldus* plaintiffs provided no documentation supporting their fee request. Instead, they simply estimated legal fees in the amount of approximately $350,000 together with $125,000 in costs. (Plaintiffs' Memo. of Law at 4, 12). Accordingly, the defendants do not have the ability to review, much less challenge, the reasonableness of the *Baldus* plaintiffs' fees.

In lieu of piecemeal challenges—which may never be relevant depending on how both this Court and the United States Supreme Court acts—the defendants reserve their right to review and challenge the reasonableness of *all* of plaintiffs' attorney's fees and costs[7] following this Court's decision on whether it will revisit its order that each party is to bear its own costs. Should the Court amend the Judgment, defendants request a briefing schedule on this issue to ensure orderly disposition of the matter.

For the moment, the defendants note that the plaintiffs included several inappropriate elements in their Cost Itemizations. For instance, the *Baldus* plaintiffs seek reimbursement for regular witness fees ($3,000.73), copies ($25,884.46), expert witness fees[8] ($46,691.34), and trial transcripts ($3,495.96), among other items. The *Voces* plaintiffs seek reimbursement for expert witness fees ($16,187.50) and printing ($2,637.36) among other items. These costs are prohibited under an award for attorney's fees pursuant to the Voting Rights Act. *Duckworth v. Whisenant*, 97 F.3d 1393, 1399 (11th Cir. 1996); *see also* 28 U.S.C. § 1920; *Henkel v. Chicago, St. Paul, Minneapolis & Omaha Railway*, 284 U.S. 444, 446 (1932); *Kivi v. Nationwide Mut. Ins. Co.*, 695 F.2d 1285, 1289 (11th Cir. 1983) ("additional amounts paid as compensation, or fees, to expert witnesses cannot be allowed or taxed as costs in cases in federal courts"). In addition, if it appears that the bills include charges for duplicative work, fees should be assessed for only the initial work. *See, e.g., Gerena-Valentin v. Koch*, 739 F.2d 755, 759 (2d Cir. 1984) ("a

[7]Such a review would, obviously, challenge time and expense for irrelevant avenues of inquiry (such as the anomalies) as well as the groundless "discretionary" traditional redistricting principle claims and baseless Voting Rights Acts claim and potentially even the asserted rates for counsel. Defendants do not waive any of their rights to fully challenge the detailed statements of attorney's fees and costs upon a briefing schedule set by the Court absent a stay of the second Motion.

[8]Interestingly enough, both plaintiff groups used the same expert witness, so it is unclear why there are costs for two separate experts by these plaintiffs.

duplicative action which contributes virtually nothing to the ultimate result cannot justify an award of counsel fees").

V. A STAY OF THE DECISION ON ATTORNEY'S FEES AND COSTS IS APPROPRIATE GIVEN THE CIRCUMSTANCES.

On April 19, 2012, the defendants filed a Notice of Appeal to the United States Supreme Court. (Dkt. #239). Should the defendants prevail, both of these Motion will become moot.

However, should the Court choose to amend the Judgment to allow for applications for fees and costs, the defendants respectfully request that the Court stay further action until conclusion of the appeal.

CONCLUSION

The Court's order that the parties bear their own costs is a fair resolution considering the totality of circumstances in this case. However, if the Court alters or amends its Judgment, the defendants respectfully request an award of their attorney's fees and costs incurred in defending against the *Baldus* plaintiffs' "traditional redistricting principles" claims and the portions of their Voting Rights Act claim related to African American and Native American districts, and all of the intervenor-plaintiffs' claims.

Additionally, the defendants request the opportunity to review and/or challenge the reasonableness of any attorney's fees and costs submitted to this Court in a further briefing schedule to be set by this Court.

Therefore, the defendants respectfully move this Court for an Order:

1. DENYING plaintiffs' motion to alter or amend the judgment on costs; or, alternatively (if the Court grants the plaintiffs' motion to alter or amend the judgment on costs) an Order:

2.a. GRANTING defendants their attorney's fees and costs (to be submitted to the Court for a review of their reasonableness) as against the *Baldus* plaintiffs with respect to Claims 2, 4, and 2/3rds of Claim 6 and all of the claims of the intervenor-plaintiffs;

b. GRANTING the defendants' request to review and challenge the reasonableness of both the *Baldus* and the *Voces* plaintiffs' attorney's fees and costs; and

c. Setting a briefing schedule on the reasonableness of attorney's fees; and

3. GRANTING a stay of the Motion for Attorney's Fees and Costs pending a decision by the United States Supreme Court on the appeal.

Dated this 26th day of April, 2012.

Respectfully submitted,

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